is strictly an equitable doctrine. See *London, etc. Ry. Co.* v. *Gomm*, 20 Ch. D. 562, 583. And it is a fundamental equitable principle that equity will not enforce a burden where there is no benefit derived. For example, equity refuses to specifically enforce a contract where no substantial benefit would result. *Miles* v. *Dover, etc. Iron Co.*, 125 N. Y. 294, 26 N. E. 261. So if the covenants in the principal case are considered as running with the land in equity, there being no benefit, they should not be enforced. But it seems that the effect of such restrictive covenants is rather to create an equitable property right, for when the right is once recognized damages are immaterial. *Peck* v. *Conway*, 119 Mass. 546. Yet if so considered, the same result follows, for it would clearly be unjust and contrary to sound policy to create a property right to satisfy a mere whim of a stranger. Where originally the adjoining lands were benefited, but due to a change in the neighborhood the benefit ceases, equity refuses to enforce the burden. *Jackson* v. *Stevenson*, 156 Mass. 496. *A fortiori*, where no adjoining land ever existed, equity should not recognize a property right at all. Nor is this analogous to an easement in gross at law, where these are permitted, for there a right of beneficial user is created in the quasi-dominant owner, while here no benefit whatever can be derived. It is submitted that there must be some physical or financial benefit to the neighboring lands or the covenantee's business, *i. e.*, some relation of "dominancy" and "serviency," or the covenant is only personal and collateral. See *Formby* v. *Barker*, [1903] 2 Ch. D. 539, 552. The authorities also are conclusive against the holding of the principal case. *Dana* v. *Wentworth*, 111 Mass. 291; *Formby* v. *Barker*, *supra*; *Rector* v. *Rector*, 135 N. Y. App. Div. 501, 114 N. Y. Supp. 623.

SALES — EXPRESS WARRANTIES — WHAT CONSTITUTES. — The plaintiff leased of the defendant a farm, together with all the implements upon it. Amongst the latter was a traction engine, in regard to which the defendant said before the lease was executed, "You have nothing to do but to flop the fly wheel and away she goes." The plaintiff sues for breach of warranty, basing his claim to an express warranty solely upon this statement. *Held*, that he may recover. *Tocher* v. *Thompson*, 26 West. L. Rep. 288 (Manitoba Ct. App.).

A recent decision in the House of Lords established for England the rule that an express warranty cannot arise without a distinct collateral agreement, including an offer to warrant by the vendor and acceptance by the vendee. *Heilbut* v. *Buckleton*, [1913] A. C. 30. For a criticism of this view, see article by Professor Williston in 27 HARV. L. REV. 1. The principal case, coming as it does from a Canadian jurisdiction, is interesting because while announcing the test of *Heilbut* v. *Buckleton*, it in fact grants recovery on what the American authority would treat as merely an affirmation of fact that induces the sale. See 21 HARV. L. REV. 555 ff. The court decided the case as though it were purely one of sale, although the actual transaction was a long-term bailment of the traction engine. It is submitted, however, that this should make no difference, and that whatever constitutes an express warranty in the law of sales should apply equally to the law of leases of chattels. It has long been clear that the bailor of a chattel for a specific purpose is subject to the rules of implied warranty. *Jones* v. *Page*, 15 L. T. Rep. N. S. 619.

SALES — STOPPAGE IN TRANSITU — EFFECT OF ATTORNMENT BY BAILEE. — Upon the insolvency of the vendee, a number of claims for stoppage *in transitu* were entered for goods held by the U. bleachery, an independent concern. On one lot, the goods before the sale had been bleached and held for the vendor and no notice of the sale had reached U. On another lot the goods were held as in the first case, but the vendee had given a delivery order to U., received delivery of part, and U. held the remainder subject to the vendee's order. On

a third lot, the vendor sold unbleached goods to the vendee and delivered to U., who put them in the vendee's name, and according to a previous arrangement with the vendee bleached at the vendee's direction and expense, and delivered a part. *Held*, that the right of stoppage *in transitu* continued on all the lots. *In re Poe Manufacturing Co.*, 80 S. E. 194 (S. C.).

The decision on the first claim is clearly correct. If a bailee without notice of the sale holds goods for the vendor, the latter's lien may be exercised, as the goods remain in his constructive possession. *M'Ewan* v. *Smith*, 2 H. L. Cas. 309; *In re Batchelder*, 2 Low. 245, 2 Fed. Cas. No. 1099. After the bailee is notified to deliver to the purchaser, the right of stoppage *in transitu* exists until the bailee attorns to the buyer. *Rowe* v. *Pickford*, 8 Taunt. 83; *Norfolk Hardwood Co.* v. *New York Central & H. R. R. Co.*, 202 Mass. 160, 88 N. E. 664. The partial delivery of the second lot suggests attornment, but is not conclusive. *Ex parte Cooper*, 11 Ch. D. 68. But attornment appears in the bailee's holding the remainder subject to the vendee's order. *Guilford* v. *Smith*, 30 Vt. 49. As to the third lot, the bailee by previous agreement held subject to the buyer's directions from the very start. *Cf. Scott* v. *Pettit*, 3 B. & P. 469; *In re Batchelder*, *supra*. The bailee was under a duty also to bleach the goods. A bailee's additional duty to the purchaser other than carriage is such an attornment as to end the transit. See *Bethel* v. *Clark*, 20 Q. B. D. 615, 617; *Harris* v. *Pratt*, 17 N. Y. 249, 263; WILLISTON, SALES, § 524; 23 HARV. L. REV. 142. This has been applied where the extra duty was forwarding elsewhere. *Norfolk Hardwood Co.* v. *New York Central & H. R. R. Co.*, *supra*. The duty to bleach seems *a fortiori* such a submission to the purchaser as to terminate the vendor's rights.

SPECIFIC PERFORMANCE — NEGATIVE CONTRACTS — CONTRACT TO BUY BEER FROM PLAINTIFF ONLY. — The defendant contracted to buy from the plaintiff all the beer used in the defendant's saloon for a certain period, and not to buy from any one else. The contract contained a provision for liquidated damages. The plaintiff seeks to enjoin the defendant from buying of any other dealer. *Held*, that the injunction will not be granted. *Bartholemae & Roesing Brewing Co.* v. *Modzelewski*, 47 Nat. Corp. Rep. 686 (Ill. App. Ct.).

The question of enforcing a negative contract in regard to land has usually arisen in connection with restrictions that are really equitable servitudes. In such cases no damage would be necessary for relief. The plaintiff is protected by some courts because the covenant will not run at law. *Catt* v. *Tourle*, 4 Ch. App. 654. The better theory is that the servitude is a property right, a forced sale of which would be unjust. (See criticism, in this issue of the Review, of the Illinois case of *Van Sand* v. *Rose*, 103 N. E. 194, 27 HARV. L. REV. 494.) Such a servitude could be imposed on the defendant's business as well as on his land. *Wilkes* v. *Spooner*, 27 T. L. R. 157. It is, however, the intent of the parties that creates these servitudes, as inferred from the agreement and the surrounding circumstances. *Peck* v. *Conway*, 119 Mass. 546. As the court in the principal case points out, no such intent is apparent here, so there is no servitude, but a mere negative contract. The adequacy of the legal remedy is therefore important. The damage that will be caused the plaintiff by the defendant's buying from competitors will exceed the damage from the mere loss of the sale, and will be purely conjectural. The presence of a provision for liquidated damages will not prevent specific performance. *Diamond Match Co.* v. *Roeber*, 106 N. Y. 473, 13 N. E. 419. It is therefore submitted that the injunction should have been granted.

THEATRES — RIGHTS OF TICKET HOLDER. — The plaintiff, during the course of a moving picture performance, for which he had purchased a reserved seat, was ejected from the defendant's theatre, with no unnecessary force. He brings